IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2540 OF 2004

Galaxy Apartments Co-op.
Housing Society Ltd. ... Petitioner

Vs.

Rajesh (Raju) Durgani & Ors. ... Respondents

Mr. J. Reis with Mr. R.N. Kachare for Petitioner.

Mr. R. Narula i/by J. Narula & Associates for
Respondent Nos. 1 to 3.

Mr. R.M. Sawant, Government Pleader for
Respondent Nos. 4 and 5.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 18, 2004

P.C.

1. Rule. By consent heard forthwith.

2. Consent terms have been arrived at between the parties. However, on behalf of the Petitioner, their learned counsel draws my attention to the impugned order which refers to circular dated 3.3.2001 passed by the Commissioner and Registrar, Cooperative Societies, Maharshtra State, Pune that Application under Section 101, Maharashtra Cooperative Societies Act, 1960 cannot be filed against legal heirs of the member. By that circular, it is set out as under :

"Application shall contain claim of dues against persons from whom amount is due to the society in the due course of its business. If Partnership

Firm, Company or any other body corporate is a debtor, then it shall be proved to the satisfaction of the registrar that such firm, Company or Body corporate has been duly admitted to the Membership of the society and provisions of section 22 of the Act are complied with. If a debtor is reported to be dead, then application shall not be filed against legal representatives of the deceased debtor."

3. The learned counsel points out that it is clearly contrary to the judgment of this court dated 4.3.2002 in Writ Petition No. 1091 of 2002 in Kushal Mahabal Shetty Vs. The Deputy Registrar, C.S. Thane and Thane Janata Sahakari Bank Ltd. and the judgement of the Division Bench of this Court in Sai Griham Apartment Cooperative Housing Society Ltd. Vs. The Deputy Registrar, Cooperative Societies, Nashik and others in Writ Petition No. 3153 of 1998. It is pointed out that directions issued in Para 3 of the said circular that the application shall not be filed against legal representatives of the deceased debtor will be contrary to language of Section 101. On a consideration of the judgement in Kushal Mahabal Shetty (supra) it is clear that the matter was in respect of dues of the Cooperative Bank. There also the expression used is "recovery of arrears of dues". Similar language is used also in respect of Cooperative Housing Societies. The view therefore,

taken in Kusal Mabahal Shetty is also applicable in so far as Cooperative Housing Societies are concerned. Apart from that the quasi judicial authorises are not bound to follow the circulars issued in exercise of executive power. The Respondnet Registrar is diercted to issue notification excluding Para 3 of the said circular daetd 3.3.2001 within six weeks from today and communicate the same to all concerned.

4. Having said so, the minutes of order signed by the petitioners, Respondent No. 1 and counsel for the Petitioners and Respondent No. 1 are taken on record and marked "X" for identification. Undertakings as contained in the minutes of order are accepted.

. Rule made absolute in terms of minutes of order.

C.C. expedited.

(F.I. REBELLO,J.)